

9 FAM 42.63 Procedural Notes

9 FAM 42.63 PN1 Packet System

9 FAM 42.63 PN1.1 Importance of Standard Procedures

(TL:VISA-57; 4-15-92)

A series of packets of form letters, questionnaires, and information sheets has been prepared to meet the needs for correspondence in most situations arising during the processing of an immigrant visa case. Since the use of the packets is basic to such determinations as the alien's entitlement to immigrant status and being documentarily qualified, consular officers must follow the processing steps set forth in the packet system. [See 9 FAM 42.55 and 9 FAM 42.62.]

9 FAM 42.63 PN1.2 Packet System Guidelines

(TL:VISA-57; 4-15-92)

Although consular officers must observe strictly the regulations defining "entitled to immigrant classification," "documentarily qualified," and "priority date," consular officers must use common sense with regard to combining packets when the situation warrants. [See 9 FAM 42.52 and 9 FAM 42.53.] For example, when the consular officer knows that the intending immigrant is, or is about to become, the spouse of a U.S. citizen (or resident alien, assuming second preference numbers are available for the immigrant's foreign state or dependent area), the officer may proceed directly to Packet 3 in order to initiate the required clearances.

9 FAM 42.63 PN2 Packet1

(TL:VISA-57; 4-15-92)

a. Packet 1 [see 9 FAM 42.63 Exhibit I and 9 FAM 42.63 Exhibit II] consists of Form OF-168, General Information for Applicants for Immigrant Visas.

b. Upon receipt of an initial inquiry from an intending immigrant, whether by mail, telephone, or in person, the post shall provide the alien with Packet 1. The post shall make no record of the inquiry at this time. All correspondence from the alien shall be returned with Packet 1.

c. If the alien inquires about a specific immigrant visa category, such as family-sponsored or employment-based, include the appropriate Packet 2 information sheet in Packet 1.

9 FAM 42.63 PN3 Packet 2

(TL:VISA-57; 4-15-92)

Packet 2 has three variations (a-c). Choosing the appropriate variation depends upon the method by which the alien may establish entitlement to an immigrant classification. Each Packet 2 will contain a Form DSL-988 Transmittal Letter [see 9 FAM 42.62 Exhibit II], in which the lettered paragraph which corresponds to the appropriate sub-packet number shall be checked. The post shall not create a file record in connection with the furnishing of any of the variations of Packet 2 described below. The post shall return all correspondence received from the alien with Packet 2.

9 FAM 42.63 PN3.1 Packet 2(a) - Family

(TL:VISA-57; 4-15-92)

a. Packet 2(a) consists of:

- (1) Form DSL-988, Transmittal Letter [see 9 FAM 42.63 Exhibit II]; and
- (2) Form DSL-990, Family-Sponsored Information Letter [see 9 FAM 42.63 Exhibit III].

b. The post shall provide Packet 2(a) upon receipt of an inquiry from an intending immigrant which clearly indicates that the alien has relatives in the United States who have the required relationship for a family-sponsored visa.

9 FAM 42.63 PN3.2 Packet 2(b) - Employment

(TL:VISA-57; 4-15-92)

a. Packet 2(b) consists of:

- (1) Form DSL-988, Transmittal Letter [see 9 FAM 42.63 Exhibit II]; and
- (2) Form DSL-1081 Information Sheet - Employment-Based Immigrant Visa Requirements [see 9 FAM 42.63 Exhibit IV].

b. The post shall provide Packet 2(b) upon receipt of an inquiry from an intending immigrant which clearly indicates that the alien intends to seek an employment-based visa as a priority worker, member of the professions, skilled or unskilled worker, or employment-creation investor.

9 FAM 42.63 PN3.3 Packet 2(c) - Unqualified

(TL:VISA-57; 4-15-92)

a. Packet 2(c) consists of Form DSL-988 Transmittal Letter [see 9 FAM 42.63 Exhibit II].

b. The post shall provide Packet 2(c) to all aliens who indicate having made a previous inquiry, and who do not indicate any possible entitlement to immigrant visa status. Post shall check Block (d) on Form DSL-988.

9 FAM 42.63 PN4 Centralized Immigrant Visa Processing

9 FAM 42.63 PN4.1 Immigrant Visa Petitions Approved by INS in United States

(TL:VISA-113; 5-31-95)

a. Effective October 1, 1991, all immigrant visa petitions approved by the Immigration and Naturalization Service in the United States are sent to the National Visa Center (NVC) prior to transmission to posts.

b. NVC will enter the petition data into a computer and send the appropriate packet (3 or 3(a)). When a case has legal representation in the United States, NVC will send the Packet to the lawyer. NVC shall send active petitions (immediate relatives and those with current priority dates) to posts for immigrant visa processing, and shall mail Packet 3 to the beneficiary. NVC shall send beneficiaries of inactive petitions (oversubscribed categories with non-current priority dates) Packet 3(a). Inactive petitions are held at the NVC until the case becomes current, at which time NVC shall mail the applicant Packet 3 if the applicant is overseas. If the applicant has a U.S. address on the petition, the NVC will send him a letter informing the applicant of the option available to seek adjustment of status or to apply for a visa abroad. The applicant is requested to return the form attached to the letter indicating which option he wishes to follow. Only if the applicant states he wishes to apply at a Foreign Service post will a Packet 3 be sent to an applicant in the United States. Each month NVC shall send a computer tape to all IVACS posts listing all cases processed, and send prepared Forms OF-224 to all non-automated posts. IVACS posts that also have E mail may receive their data via E mail; please inform the NVC if your post wishes to avail itself of this medium.

c. When the post receives the returned Packet 3 (Forms OF-230 I and OF-169) the post shall process the case as described in 9 FAM 42.63 PN5.1-2(d) below.

9 FAM 42.63 PN4.2 Immigrant Visa Petitions Approved Abroad

(TL:VISA-113; 5-31-95)

Petitions approved at posts, either by the consular officer or INS office abroad, are handled as described in 9 FAM 42.63 PN5 below. The post shall send Packet 3 or 3(a) as appropriate.

9 FAM 42.63 PN4.3 Sending Petitions by Cable

(TL:VISA-113; 5-31-95)

When INS or NVC sends telegraphic notification of a petition approval to the post (i.e., Visas Thirty-Seven, Visas Forty, etc.) the post shall make a record in the file and send Packet 3 to the beneficiary as instructed in PN5.1-2(c) below. INS shall send the actual petition to NVC, and NVC shall forward the petition to the post without further action.

9 FAM 42.63 PN4.4 Sending Petitions by FAX

(TL:VISA-113; 5-31-95)

a. Since all stateside approved petitions are now channeled through NVC, the Department believes that telephone, telegraphic or FAX messages from NVC are a reliable means of notifying posts of petition approval in emergent circumstances.

b. While there is no regulatory authorization for IV processing based on FAX bio-data sheets alone, visas can be issued on the basis of a telegraphic notification or the Form I-797 notice of action. However, an IV can also be issued whenever the adjudicating consular officer has firm grounds for believing a petition has been approved. This assurance can take the form of a memorandum of record or Form FS-552 from the consul to the INS stating the circumstances of the particular case; i.e., why no petition is included in the packet for INS inspection, and any available secondary evidence such as a copy of an IVACS print-out, telcon memo, for a copy of the NVC bio-data sheet.

c. While the Department does not recommend routine immigrant visa issuance without all appropriate documents, it also recognizes that there are occasions when common sense and equity necessitate issuance without the petition, and at times without telegraphic notification or the Form I-797.

9 FAM 42.63 PN4.5 Identifying NVC FAX Petitions

(TL:VISA-113; 5-31-95)

NVC faxes bio-data sheets to posts only in those cases where the original petition has been lost, misdirected, delayed, or in other emergent circumstances. The FAX will have a cover sheet from the National Visa Center and the covering memorandum will be signed by the Director. The bio-data sheet is self-explanatory and contains all data necessary for immigrant visa processing. If there is any question concerning the authenticity of a FAX message from NVC, posts may telephone the Director in charge at 603-334-0704, or send a telegram to NVC.

9 FAM 42.63 PN4.6 Petitions for Aliens Eligible for Adjustment

(TL:VISA-113; 5-31-95)

INS will no longer forward to NVC or to posts petitions for persons who are eligible for adjustment of status and for whom numbers are available in the immediate future. Posts, therefore, will no longer have a record of such cases, and will only become aware of dependents following to join upon receipt of a Form I-181, Memorandum of Creation of Record of Lawful Permanent Residence. Posts should create a file and process following to join cases on the basis of Form I-181.

9 FAM 42.63 PN4.7 Returned Petitions

(TL:VISA-113; 5-31-95)

a. In general, if it is anticipated that a petition is being transferred permanently from post custody, it should be sent through NVC. If the transfer of the petition is only temporary and the post will ultimately resume processing of the case, the petition should be sent directly to the INS.

b. If a petition is being returned because a visa has already been issued, or for revocation or for investigation which may result in revocation, the petition should be forwarded to INS through NVC. All petitions sent for return to INS through the NVC should be sent ATTN: Problem Resolution Unit. Please attach a note to the petition indicating the case number and the reason for return.

c. If the post is returning a petition in response to a request from INS, it should be sent directly to the requesting office, with a copy of the transmittal memo to NVC. Posts which have arrangements with overseas INS field offices may continue to route this type of case through them. For more complete information posts may wish to consult 9 FAM Part IV Appendix D, Communications with INS, of the Anti-Fraud Handbook. Any post which does not have a copy may request one from CA/FPP.

d. In all cases in which the petition is returned through NVC, the complete address of the receiving INS office should be clearly indicated.

9 FAM 42.63 PN4.8 Weekly Age-Out Reports

(TL:VISA-113; 5-31-95)

a. NVC generates a weekly age-out report which identifies applicants and derivative beneficiaries who have aged out or will soon age out of their assigned visa categories. The results are then cabled to the processing posts.

b. NVC reports key in on those cases which have been sent to post in the past week, and identify persons who have aged out or will age out in the next two months. If a principal applicant ages out into a different visa category with a significantly earlier qualifying date (e.g., F2A to F2B), the case should be returned to NVC. Since these age-out cables are routine, posts need not feel obligated to respond to NVC regarding the status of these cases.

9 FAM 42.63 PN4.9 Communicating With NVC

(TL:VISA-113; 5-31-95)

a. The address of the National Visa Center (NVC) is: 32 Rochester Avenue Portsmouth, New Hampshire 03801-2902 Telephone Number (603) 334-0700

b. Telegraphic address is RUEHPNH/NVC PORTSMOUTH using the routine indicator.

9 FAM 42.63 PN5 Packet3

(TL:VISA-57; 4-15-92)

Packet 3 has two variations: Packets 3 and 3(a). Each is described fully below.

9 FAM 42.63 PN5.1 Packet 3 Sent Promptly When Qualifying Date Reached

(TL:VISA-57; 4-15-92)

The importance of promptly mailing Packet 3 to applicants entitled to immigrant status whose priority dates are within the qualifying dates established by the Department cannot be overemphasized. Whenever it is not possible to do so, the post shall submit a report, by memorandum, to the Department outlining the reasons it is unable to do so.

9 FAM 42.63 PN5.1-1 Preparing Immigrant Visa Control Cards

(TL:VISA-57; 4-15-92)

Posts shall prepare Form OF-224B, Immigrant Visa Control Card, when evidence of entitlement to immigrant status is established. Posts shall note the date Packet 3 or Packet 3(a) was mailed on both copies. [See 9 FAM 42.52 Regs/Statutes and 9 FAM 42.52 Notes.] IVACS posts must initiate an IVACS entry at this point.

9 FAM 42.63 PN5.1-2 Aliens Not Subject to Numerical Limitation or For Whom Visa Number Available

(TL:VISA-113; 5-31-95)

a. Packet 3 [see 9 FAM 42.63 Exhibit V, 9 FAM 42.63 Exhibit VI, 9 FAM 42.63 Exhibit VII, 9 FAM 42.63 Exhibit VIII, 9 FAM 42.63 Exhibit IX and 9 FAM 42.63 Exhibit XVI] consists of:

(1) Form OF-169, Visa Document Transmittal Letter (covering letter for Packet 3) [see 9 FAM 42.63 Exhibit V];

(2) Form OF-167, Evidence Which May Be Presented To Meet the Public Charge Provision of the Law [see 9 FAM 42.63 Exhibit VI];

(3) Form I-134, Affidavit of Support [see 9 FAM 42.63 Exhibit VII] or Form DS-1858, Sponsor's Financial Responsibility [see 9 FAM 42.63 Exhibit IX];

(4) Form OF-230 I, Application for Immigrant Visa and Alien Registration, Part I - Biographic Data (one for each applicant) [see 9 FAM 42.63 Exhibit VIII] one for each applicant; and

(5) Form DSL-1083, Immigrant Visa Supplemental Information Sheet [see 9 FAM 42.63 Exhibit XVI].

b. Posts may also include a local non-standard form covering other post-specific matters not covered by Form DSL-1083.

c. The consular officer shall send Packet 3 immediately to applicants, including immediate relatives, for whom evidence of entitlement to immigrant classification has been received, provided that the applicant's priority date (if subject to a numerical limitation) is within the qualifying date established by the Department. Evidence of entitlement to immigrant classification includes:

(1) An approved petition sent via cable or fax directly from INS;

(2) Form I-797, Notice of Action, supported by telephone confirmation from INS;

(3) A petition approved at post;

(4) Proof of derivative status; or

(5) Proof of entitlement to returning resident status. As noted in 9 FAM 42.63 PN4.1 above NVC will send Packet 3 directly to the beneficiary when the petition is filed in the United States and no cable is sent.

d. Upon return of Form OF-230 I, Application for Immigrant Visa and Alien Registration Part I - Biographic Data, the post shall initiate all appropriate clearances called for in section 9 FAM PART IV Appendix C (formerly Appendices B/C/E), Introduction - Clearance Procedures. The post shall then file Form OF-230 I in the post's immigrant A-Z files with the principal applicant's petition and other documents, and shall hold the form until the applicant's formal immigrant visa interview with a consular officer. At the time of the applicant's interview the consular officer shall attach Form OF-230 I with Form OF-230 II to make the complete application form. The post shall send additional Forms OF-230 I to derivative applicants along with Packet 4. [See 9 FAM 42.63 PN10.1(c) below.]

9 FAM 42.63 PN5.1-3 Presenting Affidavits of Support for Overcoming Public Charge Provisions

(TL:VISA-57; 4-15-92)

If the applicant does not submit Form I-134 (rev. 12-1-84), Affidavit of Support [see 9 FAM 42.63 Exhibit VII], post shall include with Packet 3 Form DS-1858, Sponsor's Financial Responsibility Under the Social Security Act [see 9 FAM 42.63 Exhibit IX], which must be signed by sponsors who supply an affidavit of support to assist a beneficiary to overcome the public charge provisions.

9 FAM 42.63 PN5.1-4 Packet 3 to Alien Previously Sent Packet 3(a)

(TL:VISA-113; 5-31-95)

The post or NVC shall send Packet 3 to an alien formerly sent Packet 3(a) when the:

(1) Applicant's priority date reaches the qualifying date established by the Department; or

(2) Applicant advises the post or NVC that an accompanying spouse was born in a foreign state for which immigrant visa numbers are available, or that the alien or spouse can otherwise benefit from an alternate chargeability under INA 202(b).

9 FAM 42.63 PN5.2 Packet 3(a)

(TL:VISA-57; 4-15-92)

a. Packet 3(a) [see 9 FAM 42.63 Exhibit XI] consists of Form DSL-869A.

b. Under the centralized immigrant visa process, posts should not receive petitions which are not current.

c. Posts shall send Packet 3(a) to an applicant for whom evidence of entitlement to immigrant classification has been received but for whom a visa number is not available.

d. In the case of any applicant in an oversubscribed category, posts shall check the petition to determine whether the applicant may benefit from the foreign state chargeability of the spouse. If the spouse's birthplace is not provided in the documents available, posts shall include Form OF-230 I in Packet 3(a).

9 FAM 42.63 PN5.2-1 Endorsing Form OF-224B

(TL:VISA-57; 4-15-92)

The post shall endorse Form OF-224B to show the date Packet 3(a) is sent.

9 FAM 42.63 PN6 Notice of "Conditional Status"

(TL:VISA-57; 4-15-92)

Aliens normally entitled to IR-1; IR-2; F21; F22; F23; F24; F25; F31; F32; or F33 classification will be granted "conditional status"(C21; C22: CX1; CX2; CX3; C24 or C25 respectively) at the time of visa issuance if the basis for immigration is a marriage to a petitioner which was entered into less than two year prior to the applicant's admission to the United States as an immigrant. [See 9 FAM 42.73 Procedural Notes, 9 FAM 42.73 PN1.8-4.] All Packet 3s for applicants in these categories should include a notice of conditional status. The text of the notice is to be verbatim as follows:

If at the time of admission to the United States you will not have celebrated the second anniversary of your marriage, which is the basis of your immigrant status, you are subject to the provisions of section 216 of the Immigration and Nationality Act. Under the provision, you will be granted conditional permanent residence by an officer of the Immigration and Naturalization Service at the time of your admission to the United States. As a result, you and your spouse must file a joint petition with the Immigration and Naturalization Service to have the conditional status removed. The petition must be filed within the ninety day period immediately preceding the second anniversary of the date you were granted conditional permanent resident status. If a petition to remove the conditional basis of your status is not filed within this period, your conditional permanent residence status will be terminated automatically and you will be subject to deportation from the United States.

9 FAM 42.63 PN7 Undeliverable Packet 3's

(TL:VISA-57; 4-15-92)

Immigrant visa petitions related to "undeliverable" Packet 3s must be kept in the file until the post receives information which would reflect the status of petition and/or the beneficiary. The consular officer shall note on Form OF-244 that Packet 3 was unable to be delivered.

9 FAM 42.63 PN8 Clearance Processing

(TL:VISA-113; 5-31-95)

a. Post clearance requests for all posts, both on-line and off-line with CLASS, have been eliminated in both cases. However, clearance requests are still required when:

(1) A CLASS or microfiche check indicates derogatory information is on file at post; and

(2) 9 FAM PART IV Appendix C specifically requires a name check of applicants from that country.

b. In every case the post must annotate Form OF-244B or make an entry in IVACS to show the date and type of background check initiated and the date and result of completion.

9 FAM 42.63 PN9 Determining Alien Documentarily Qualified

(TL:VISA-57; 4-15-92)

An applicant is considered to be documentarily qualified when two facets of the processing procedure have been completed:

(1) The alien has returned Form OF-169 and declared that all of the required documents have been obtained; and

(2) The post has completed local clearances, and clearance requests for other posts, or has reason to believe that they will be completed before a visa number will be available for the applicant. [See 9 FAM 42.52 Procedural Notes 3.7 regarding the reporting of documentarily qualified applicants.]

9 FAM 42.63 PN10 Packets 4

(TL:VISA-57; 4-15-92)

Packet 4 has two variations:

(1) Packet 4 to be sent to applicants who have responded to Packet 3 or Packet 4(a); and 3

(2) Packet 4(a) to be sent to applicants who were sent Packet 3 but have not responded.

9 FAM 42.63 PN10.1 Packet 4

(TL:VISA-113; 5-31-95)

a. Packet 4 [see 9 FAM 42.63 EXHIBIT XI, 9 FAM 42.63 Exhibit XII, 9 FAM 42.63 Exhibit XIII, and 9 FAM 42.63 Exhibit XIV] consists of:

(1) Form OF-171, Immigrant Visa Appointment Letter, which is a letter giving instructions for immigrant visa applicants to make formal application for an immigrant visa [see 9 FAM 42.63 Exhibit XI];

(2) Form OF-171 Supplement (local form or IVACS form, gives post-specific information, such as location, time, fees, and special procedures for the visa appointment [see 9 FAM 42.63 Exhibit XII];

(3) Form OF-230 II, Application for Immigrant Visa and Alien Registration, Part II - Sworn Statement [see 9 FAM 42.63 Exhibit XIII];

(4) Instructions for Medical Examination (local form); and

(5) IRS Form 9003, Additional Questions to be Completed by all Applicants [see 9 FAM 42.63 Exhibit XIV].

b. The post must send Packet 4 to aliens who have responded to Packet 3 or Packet 4(a). Posts shall not schedule appointments for applicants chargeable to a numerical limitation prior to receipt of allocations of visa numbers from the Department.

c. Since NVC will send only one copy of Form OF-230 I to each principal applicant, posts should provide copies of Forms OF-230 I and 230 II for each dependent with Packet 4, if appropriate. Posts can determine the number of dependents from Form OF-169.

9 FAM 42.63 PN10.2 Packet 4(a)

(TL:VISA-57; 4-15-92)

a. Packet 4(a) [see 9 FAM 42.63 Exhibit V, 9 FAM 42.63 Exhibit VI, 9 FAM 42.63 Exhibit VIII and 9 FAM 42.63 Exhibit XV] consists of:

(1) DSL-1073, Notice of Possible Termination of Registration [see 9 FAM 42.63 Exhibit XV];

(2) Form OF-169, Visa Document Transmittal Letter [see 9 FAM 42.63 Exhibit VI];

(3) Form OF- 230 I, Application for Immigrant Visa and Alien Registration, Part I - Biographic Data [see 9 FAM 42.63 Exhibit IX]; and

(4) Form OF-167, Evidence Which May be Presented to Meet Public Charge Provisions of the Law [see 9 FAM 42.63 Exhibit VII].

b. Packet 4(a) was designed to comply with the provisions of INA 203(g). [See 9 FAM 42.83 Notes and 9 FAM 42.83 Procedural Notes.] The post must send Packet 4(a) to applicants who have not responded to Packet 3 within one year. In the case of an applicant whose priority date has not been reached on the one year anniversary, the post should send Packet 4(a) when the applicant's priority date is reached.

9 FAM 42.63 PN11 Response to Packet 4(a)

9 FAM 42.63 PN11.1 Applicant Returns Packet3

(TL:VISA-57; 4-15-92)

If the applicant's response to Packet 4(a) is to return Form OF-169 and Form OF-230 I, the post shall process the applicant in the same manner as any other applicant who responds to Packet 3, i.e., background checks will be conducted, a number will be requested, a medical exam will be scheduled, and the applicant will be sent Packet 4.

9 FAM 42.63 PN11.2 Applicant Fails to Respond

(TL:VISA-57; 4-15-92)

If the applicant does not comply with the Packet 4(a) instructions within one year, the consular officer shall initiate proceedings to terminate the alien's immigrant visa registration. [See 9 FAM 42.83.]

9 FAM 42.63 PN12 Packet Operations Procedures for IVACS Posts

(TL:VISA-15; 9-9-88)

IVACS posts shall follow IVACS procedures for the various packet operations. [See the IVACS Manual.]